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CHECK-OFF OF UNION DUES UNDER THE NLRA—A FEDERALLY PROTECTED BARGAINING ISSUE

A frequently inserted clause in collective bargaining agreements states that union membership dues shall be deducted from the wages of employees and remitted by the employer to designated union officers.[1] Although such an arrangement constitutes a convenient, efficient method for the collection of union dues, it may be unacceptable to an employer who assumes that this is a matter about which he has no duty to bargain. Moreover, the dues check-off is the subject of a considerable measure of state regulation[2]—much

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48. IND. ANN. STAT. § 2-227 (Burns Repl. 1946).

1. See, *e.g.*, the National Bituminous Coal Wage Agreement, 25 LAB. REL. REP. (Ref. Man.) 23 (1950). Such a provision is subject to the requirements of Taft-Hartley section 302. See note 3 *infra*.

2. The Supreme Court of Rhode Island has asserted that a dues check-off is prohibited by that state's weekly wage payment law, and statute regulating the assignment of future wages. Chabot v. Prudential Ins. Co. of America, 75 A.2d 317 (R.I. 1950); Shine v. John Hancock Mutual Life Ins. Co., 68 A.2d 379 (R.I. 1949). See R.I. LAWS 1947, c. 1944, § 1. In Delaware check-off is by statute declared unlawful. DEL. LAWS 1947, c. 196, § 4(b). In Georgia it is prohibited except on the individual request of employees, revocable at will. GA. LAWS 1947, No. 140, § 6. And in Iowa it is permitted only on the employee's individual authorization, countersigned by his spouse, and revocable on thirty days notice. IOWA CODE ANN. § 736A.5 (1946). See also ARK. STAT. ANN. tit. 81, § 202 (1947); COLO. STAT. ANN. c. 97, § 94 (6)(1)(i) (Supp. 1950); N.H. LAWS 1947, c. 194, § 21; N.C. LAWS 1947, c. 328, § 5; PA. STAT. ANN. tit. 43, § 211.6(1)(f) (Supp. 1950); TENN. CODE ANN. § 11412.10 (Williams Supp. 1949); TEX. STAT., REV. CIV. art. 5154e (1948); VA. LAWS 1947, c. 2, § 5; WIS. STAT. § 111.06(1)(i) (1947).

The restriction on check-off is in most instances contained in a comprehensive code of labor regulation. Pervading much of this state legislation, and apparently influencing its character, is a design to elevate the rights and freedoms of the individual worker. *E.g.*, IOWA CODE ANN. § 736A.1 (1946), provides: "It is declared to be the policy of the state

of which is more restrictive than the limitations imposed by Taft-Hartley section 302.[3] Both refusal by employers to negotiate with employee representatives in respect to check-off agreements and their complete interdiction or proscription except on conditions decreed by state legislation create areas of conflict with the NLRA, if a federally protected right is involved.

The NLRA grants no specific entitlement to a dues check-off. But the Act confers upon employees the right "to bargain collectively";[4] and it is stated in section 9(a) that this right may be exercised in respect to "rates of pay, wages, hours of employment, or other conditions of employment."[5] Since this section is construed to ensure to employees the right to negotiate concerning every subject comprehended by its terms,[6] the crux is whether it encompasses a check-off of union dues.

The phrase "rates of pay, wages, hours of employment, or other conditions of employment" has never been generally interpreted. Congress in formulating the Wagner Act did not proffer a definition, and subsequent attempts in Congress to particularize the scope of compulsory bargaining have failed,[7] leaving to the NLRB and the courts the task of deciding whether

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of Iowa that no person within its boundaries shall be deprived of the right to work at his chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void." It is a fair conclusion that this emphasis on individual prerogative is responsible for requirements that dues-deductions be conditioned on the authorization of each employee. See generally Millis and Katz, *A Decade of State Labor Legislation,* 15 U. OF CHI. L. REV. 282 (1947). However, it is difficult to justify the invalidation of check-off arrangements through application of a wage assignment statute. See Shine v. John Hancock Mutual Life Ins. Co., *supra.* Such legislation clearly does not comprehend the deduction of union dues from wages. Rather, its purpose is to protect employees against the temptation to surrender anticipated wage payments for an inadequate consideration. See J. Greenebaum Tanning Co., 10 WAR LAB. REP. 527 (1943); Little Steel Companies, 1 WAR LAB. REP. 325 (1942); Braddom v. Three Point Coal Corp., 288 Ky. 754, 157 S.W.2d 349 (1941); International Textbook Co. v. Weissinger, 160 Ind. 349, 65 N.E. 521 (1902).

3. Section 302 states that dues may be deducted from wages and paid to the union only on the individual assignment of each employee, and the assignment may not be irrevocable for a period of more than one year or beyond the termination date of the collective agreement. 61 STAT. 157 (1947), 29 U.S.C. § 186(a) and (c)(4) (Supp. 1950).

4. 49 STAT. 452 (1935), 29 U.S.C. § 157 (1946), as amended, 61 STAT. 140 (1947), 29 U.S.C. § 157 (Supp. 1950).

5. 49 STAT. 453 (1935), 29 U.S.C. § 159(a) (1946), unchanged by the Taft-Hartley amendment, 61 STAT. 143 (1947), 29 U.S.C. § 159(a) (Supp. 1950).

6. There is a persuasive argument that this portion of the Wagner Act was meant to concern only organization for bargaining. However, the NLRB early assumed that section 9(a) defines the scope of mandatory bargaining, and that is the accepted construction today. Cox and Dunlop, *Regulation of Collective Bargaining by the National Labor Relations Board,* 63 HARV. L. REV. 389, 394-401 (1950). See Weyand, *Majority Rule in Collective Bargaining,* 45 COL. L. REV. 556 (1945).

7. When the Taft-Hartley amendment was being formulated, it was proposed that the scope of bargaining requirements be narrowed. Sen. Rep. No. 360, 80th Cong., 1st Sess. (1947) (see note 8 *infra*); H.R. Rep. No. 3020, 80th Cong., 1st Sess. (1947). Contained in the House Bill, but not accepted by Congress, was a specific enumeration of the subjects on which bargaining would be required. See H.R. Rep. No. 245, 80th Cong., 1st Sess. 49, 71 (1947). See also Note, 58 YALE L.J. 803, 806 (1949).

a particular matter is included within the terms of the Act.[8] Neither the Board nor the courts have ventured a predictive interpretation, and the result has been a case to case application of section 9(a). Such diverse subjects as group insurance, company housing, grievances, the union shop, work schedules, and plant rules have in this manner been declared to fall within its sphere.[9] To evolve a principle from the extensive array of asserted bargainable issues seems a redoubtable task, for the Board has enunciated no criteria for identifying subjects of mandatory bargaining. However, there are frequent instances of significant language. For example, in *Woodside Cotton Mills Co.*,[10] the employer had refused to bargain collectively because he sought to retain as a prerogative of management the disposition of questions concerning work standards and loads, shut-downs, and discharges. These matters, the Board asserted, were *"ordinarily considered proper subjects for bargaining."*[11] In *Singer Mfg. Co.*,[12] paid holidays and vacations were classified as *"matters which are generally the subject of col-*

8. In the Senate Bill proposing an amendment to the Wagner Act in 1947 was a provision which, it was felt by Chairman Herzog of the NLRB, would narrow the area of mandatory bargaining. Commenting on this in a statement submitted to the Senate Committee on Labor and Public Welfare, he said, "The appropriate scope of collective bargaining cannot be defined in a phrase; it depends upon the industry's customs and history, the previously existing employer-employee relationship, technological problems and demands, and other factors. It may vary with changes in industrial structure and practice. Our own experience with the problem leads us to suggest that the matter be left to the administrative discretion of those with skill and time to consider each problem on its merits, subject to review by the courts." *Hearings before Senate Committee on Labor and Public Welfare on S. 55 and S.J. Res. 22,* 80th Cong., 1st Sess. 1914 (1947).

9. Anchor Rome Mills, Inc., 86 N.L.R.B. 1120, 1123 (1949) (group insurance); Abbott Worsted Mills, 36 N.L.R.B. 545, 555-56 (1941), *enforcement granted,* 127 F.2d 438 (1st Cir. 1942) (company housing); U.S. Automatic Corp., 57 N.L.R.B. 124, 133-34 (1944) (grievances); NLRB v. Winona Textile Mills, Inc., 160 F.2d 201 (8th Cir. 1947) (the union shop); Wilson & Co., 19 N.L.R.B. 990, 999, *enforcement granted,* 115 F.2d 759 (8th Cir. 1940) (work schedules); Timken Roller Bearing Co., 70 N.L.R.B. 500, 518 (1946), *enforcement denied on other grounds,* 161 F.2d 949 (6th Cir. 1947) (plant rules). See also Inland Steel Co., 77 N.L.R.B. 1, 4, *enforcement granted,* 170 F.2d 247 (7th Cir. 1948) (pensions and retirement); Andrew Jergens Co., 76 N.L.R.B. 363, 365 (1948), *enforcement granted,* 175 F.2d 130 (9th Cir. 1949) (maintenance of membership); Union Mfg. Co., 76 N.L.R.B. 322, 324 (1948) (bonuses); National Grinding Wheel Co., 75 N.L.R.B. 905, 906 (1948) (rest and lunch periods); Hagy, Harrington & Marsh, 74 N.L.R.B. 1455, 1471 (1947) (re-employment of laid-off employees); J.I. Case Co., 71 N.L.R.B. 1145, 1148 (1946) (the closed shop); Timken Roller Bearing Co., 70 N.L.R.B. 500, 518 (1946), *enforcement denied on other grounds,* 161 F.2d 949 (6th Cir. 1947) (subcontracting); J.H. Allison & Co., 70 N.L.R.B. 377, 378 (1946), *enforcement granted,* 165 F.2d 766 (6th Cir. 1948) (merit increases); Singer Mfg. Co., 24 N.L.R.B. 444, 470 (1940) *enforcement granted,* 119 F.2d 131 (7th Cir. 1941) (paid holidays and vacations); Washougal Woolen Mills, 23 N.L.R.B. 1, 10 (1940) (reinstatement of employees); Woodside Cotton Mills Co., 21 N.L.R.B. 42, 54-55 (1940) (work loads, discharges, and shut-downs).

10. 21 N.L.R.B. 42 (1940).

11. Woodside Cotton Mills Co., 21 N.L.R.B. 42, 54 (1940). (Italics added.) *See* Andrew Jergens Co., 76 N.L.R.B. 363, 365 (1948); National Grinding Wheel Co., 75 N.L.R.B. 905, 906 (1948); J. H. Allison & Co., 70 N.L.R.B. 377, 378 (1946).

12. 24 N.L.R.B. 444 (1940), *enforcement granted,* 119 F.2d 131 (7th Cir. 1941).

lective bargaining."[13] And in *Wilson & Co.*[14] the employer, it was held, refused to bargain by unilaterally altering work schedules, one of the matters which *"normally are the subjects of collective bargaining."*[15]

Such vague and gratuitous declarations cannot be termed an interpretation of section 9(a). But reflection will disclose that the subjects declared bargainable represent issues arising from the labor-management relationship with which, it is generally recognized from tradition, experience, or notions of policy, employees as a unit are intimately concerned.[16] In this perspective, the Board's assertions become conceptualistic expressions of the realm of mandatory bargaining.

This thesis is confirmed by *Inland Steel Co. v. NLRB.*[17] There the central issue was whether pension and retirement plans are subjects of compulsory collective bargaining. Following substantially the reasoning of the Board, the Court of Appeals for the Seventh Circuit sustained the decision that benefits flowing from a pension and retirement plan are both "wages" and "conditions of employment." The court observed that there are many issues arising from the employer-employee affiliation which, though not specifically referred to in the Act, are normally recognized as included in its bargaining requirements. And to the company's contention that pensions and retirement were not generally in vogue when the Wagner Act was passed, the court replied, "We do not believe that it was contemplated that the language of section 9(a) was to remain static. Congress in the original as well as in the Amended Act used general language, evidently designed to meet the increasing problems arising from the employer-employee relationship. . . ."[18] Thus, it was expressly recognized that section 9(a) has no intrinsic definition, that its terms are dynamic in application.[19] That in 1935 pension and retirement proposals were not subjects of effective negotiation, as correctly asserted by the company, is notably illustrative. For subsequent to enactment of the Wagner Act, labor's interest in and public favor toward such employee security

13. Singer Mfg. Co., 24 N.L.R.B. 444, 470 (1940). (Italics added.)

14. 19 N.L.R.B. 990, *enforcement granted,* 115 F.2d 759 (8th Cir. 1940).

15. Wilson & Co., 19 N.L.R.B. 990, 999-1000 (1940). (Italics added.)

16. *E.g.,* the length of the working week has traditionally been a bargaining issue. See LIEBERMAN, THE COLLECTIVE LABOR AGREEMENT 124-28 (1939). Pension and retirement benefits, on the other hand, have become a subject of effective negotiation only recently, the culmination of a growing attempt to cope with the dangers of employee insecurity. See Inland Steel Co., 77 N.L.R.B. 1 n.24 (1948); Rowe and Weiss, *Benefit Plans Under Collective Bargaining,* 67 MONTHLY LAB. REV. 229-34 (Sept. 1948).

17. 170 F.2d 247 (7th Cir. 1948), *enforcing* 77 N.L.R.B. 1 (1948).

18. Inland Steel Co. v. NLRB, 170 F.2d 247, 254 (7th Cir. 1948).

19. The court quoted approvingly, *ibid.,* from Weems v. United States, 217 U.S. 349, 373 (1910), where Mr. Justice McKenna stated, "Legislation, both statutory and constitutional, is enacted, it is true, from an experience of evils, but its general language should not, therefore, be necessarily confined to the form that evil had theretofore taken. Time works changes, brings into existence new conditions and purposes. Therefore a principle to be vital must be capable of wider application than the mischief which gave it birth." See W. W. Cross & Co. v. NLRB, 174 F.2d 875 (1st Cir. 1949).

measures mounted sharply. And by 1948 it was the natural assumption that a primary function of the employee representative is the bargaining for and acquisition of such benefits.[20] Implicit in the *Inland Steel* decision, then, is the tenet that section 9(a) is a generic category, encompassing the variant issues created by the employment relationship which are at any time recognized as vital to the principle of promoting the mutual interests of employees and management through collective bargaining.[21]

This concept of the area of compulsory bargaining easily comprehends a dues check-off. A traditional issue in labor-management negotiation,[22] the check-off device is utilized on an extensive scale.[23] Congress itself recognized this when the regulations in Taft-Hartley section 302 were enacted. And despite the limitations imposed by that Act, the practice of deducting membership dues from wages expanded after its passage.[24] The principal merit to a check-off plan arises from the stability of finance and membership which it affords to the union. Representation disputes, an impediment to plant operation, tend to assume less serious proportions since the position of the union is strengthened, both over its own members and over rival organizations.[25] Moreover, individual dues solicitation by stewards or other

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20. See note 16 *supra.*

21. So construed, section 9(a) is a highly flexible device for defining the area of compulsory bargaining. It is adaptable to "the industry's customs and history, the previously existing employer-employee relationship, technological problems and demands, and other factors," as well as "changes in industrial structure and practice." See note 8 *supra.*

22. The check-off device had its inception in the last century in agreements between the bituminous coal operators and the miners' union; and from these it spread to other industries. See 30 MONTHLY LAB. REV. 1-5 (Jan. 1930).

23. *Id.* Before the Taft-Hartley Act was adopted, in 1946, about six million workers —more than forty percent of all those under collective bargaining agreements—were covered by some form of check-off. MILLIS AND BROWN, FROM THE WAGNER ACT TO TAFT-HARTLEY 562 (1950). See LIEBERMAN, THE COLLECTIVE LABOR AGREEMENT, 69-72 (1939).

24. MILLIS AND BROWN, *op. cit. supra* note 23, at 563, 635.

25. The existence of a voluntary check-off may be an important element in barring a rival petition for certification filed during the term of a collective contract. Seeger Refrigeration Co., 2 CCH LAB. LAW REP. ¶ 8635 (1949). A contract otherwise valid as a bar to a rival petition does not preclude a present determination of representatives, if the membership of the incumbent union has repudiated that organization and shifted to another. News Syndicate Co., 67 N.L.R.B. 1178 (1946); Olive & Meyers Mfg. Co., 59 N.L.R.B. 650 (1944); Illinois Gear & Machine Co., 53 N.L.R.B. 179 (1943). See Cincinnati Steel Castings Co., 86 N.L.R.B. 592, 602 (1949) (That the employer deducted dues from wages of 55 out of 98 employees was a factor in establishing the majority status of the union.) The War Labor Board, intent on maintaining uninterrupted production in defense industries during World War II, quickly recognized the check-off arrangement as an element of peaceful labor relations. See, *e.g.*, Little Steel Companies, 1 WAR LAB. REP. 325 (1942).

union officials, which so often interferes with shop routine, is avoided by this salutary arrangement.[26]

A theory that section 9(a) does not include check-off is expounded in *Hughes Tool Co. v. NLRB.*[27] The United Steelworkers (C.I.O.) were certified as bargaining representative of the employees of the Hughes Tool Company. But the company granted a check-off privilege to a minority union, and in addition permitted the minority union to represent its members in the adjustment of their grievances. A request by the Steelworkers that these practices be discontinued was refused, and a complaint was registered with the NLRB. It was determined that the company had, by these acts, refused to bargain with the Steelworkers as the exclusive representative of its employees, and a cease and desist order was issued. The Board expressly reasoned that since the deduction of dues is a proper subject for collective bargaining, the granting of a check-off privilege to a minority organization derogates from the exclusive representative status of the majority union.[28] But there was a failure to recognize that although the certified bargaining representative acts in behalf of all employees in the unit, it is impossible for one organization to bargain in respect to the deduction of dues from wages of employees belonging to another. For in one sense a check-off device concerns the administration of internal union affairs, viz., the financial relationship between a member and his organization. The certified union has no function arising from its position as exclusive bargaining agency to inquire into the manner in which a minority group collects its dues. Therefore, that the employer is required to negotiate concerning the granting of check-off to the certified bargaining representative does not force the conclusion that he cannot, by agreement with a minority union, extend to it this privilege; for the bargaining prerogative of the representative organization is not thereby impaired. A better reasoned basis for denying to the employer this authority might lie in the notion that by checking off dues for a minority union, he is supporting an organization rivaling the one chosen by a majority of his employees.[29]

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26. In a case before the War Labor Board, adoption of check-off was directed after the employer requested it on the ground that it would minimize interference with production resulting from collection of dues by shop stewards. *In re* Hamilton Watch Co., 27 WAR LAB. REP. 9 (1945). Retail employers have in general found that deducting dues from wages is preferable to collection by union officials, for the reason that grievances tend to multiply when dues are solicited. KIRSTEIN, STORES AND UNIONS 169-70 (1950).

27. 147 F.2d 69 (5th Cir. 1945), *enforcing in part,* 56 N.L.R.B. 981 (1944).

28. The Board accepted the trial examiner's stated reasoning concerning the dispute over check-off. 56 N.L.R.B. 981.

29. It is an unfair labor practice for an employer to dominate, interfere with, or contribute support to any labor organization. 49 STAT. 452 (1935), 29 U.S.C. § 158(2) (1946), as amended, 61 STAT. 140 (1947), 29 U.S.C. § 158(2) (Supp. 1950). In his stated conclusions in the *Hughes* case, the trial examiner apparently recognized that the deduction of dues was a valuable aid to the minority union, but he failed to follow this approach to the controversy. 56 N.L.R.B. at 995. It is interesting to note that the minority union had been the bargaining agency prior to certification of the Steelworkers;

The reviewing court in the *Hughes* case, in setting aside that part of the order relating to check-off, was misguided by the same error which deceived the Board. For it likewise assumed that if the employer is required to negotiate with the certified bargaining representative in respect to a check-off plan, an agreement with a minority group to deduct from wages the dues of its members would encroach upon the position of the bargaining agency as exclusive representative. Therefore, to support its holding that the employer could not be required to cease checking off dues for the minority union, the court declared, "The collection of dues by a union from its members is not in its nature a matter for collective bargaining, which by the Act is limited to agreeing with the employer on rates of pay, wages, hours of employment, and other conditions of employment. . . . What the Company is doing in this regard is not a refusal to bargain with the Steelworkers."[30] Reaching an opposite result but with the illogic which misled the Board, the court unnecessarily adopted the untenable position that a dues check-off is not encompassed by section 9(a).

NLRA Section 7 confers on employees the right to bargain collectively.[31] Accepting the premise that this comprehends negotiation concerning a check-off arrangement, it follows that state legislation curtailing the exercise of this right is inconsistent with the federal Act, and therefore unconstitutional by virtue of the supremacy clause. Although the Supreme Court has not yet considered the inviolability of the right to a dues check-off, other rights have been carefully guarded against state infringement by decisions effectually declaring that the states have no function to regulate in this area.[32] *Amalgamated Ass'n. v. Wisconsin Employment Relations Board,*[33] the Supreme Court decision holding unconstitutional the Wisconsin public utility anti-strike law, is illustrative. Congress, it was noted, expressly guaranteed to employees the right to engage in concerted activities. This grant could not be construed to permit state regulation of peaceful strikes for higher wages;[34] therefore,

and during this period the company had accorded to the Steelworkers, then in the minority, the same privileges in respect to check-off and grievance procedure as were in dispute in this case. Whether those privileges may have been an element in promoting the subsequent change in bargaining representatives is not disclosed by the opinion.

30. Hughes Tool Co. v. NLRB, 147 F.2d 69, 74-75 (5th Cir. 1945).

31. Section 7 states, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities . . . and shall also have the right to refrain from any or all of such activities. . . ." 49 STAT. 452 (1935), 29 U.S.C. § 157 (1946), as amended, 61 STAT. 140 (1947), 29 U.S.C. § 157 (Supp. 1950).

32. See International Union of United Auto Workers v. O'Brien, 339 U.S. 454 (1950); Plankinton Packing Co. v. Wisconsin Employment Relations Board, 338 U.S. 953 (1950); La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18 (1949); Bethlehem Steel Co. v. New York Labor Relations Board, 330 U.S. 767 (1947); Hill v. Florida, 325 U.S. 538 (1945). An excellent article discussing the problem of accommodating state and federal labor legislation in this area is Cox and Seidman, *Federalism and Labor Relations,* 64 HARV. L. REV. 211 (1950).

33. 71 Sup. Ct. 359 (1951).

34. Section 7 leaves open the problem of defining the "concerted activities" which the states may not restrict. See Cox, *The Right to Engage in Concerted Activities,* 26 IND. L. J. 319 (1951).

"Congress occupied this field and closed it to state regulation."[35] The tenor of the Court's attitude toward state interference with Section 7 is further disclosed by the significant assertion, "It would be sufficient to state that the Wisconsin Act, in forbidding peaceful strikes for higher wages in industries covered by the Federal Act, has forbidden the exercise of rights protected by section 7 of the Federal Act."[36] Finally, the decision clearly illustrates that a state may not restrict the scope of mandatory bargaining.[37] An effect of the Wisconsin Act in this case was to impose compulsory arbitration of a dispute concerning work schedules. The Court observed that work scheduling is a matter about which the employer is required to bargain under section 9(a). Accordingly, state legislation relieving him of this duty could not be sustained, for it would effectually deprive employees of a federally protected bargaining right.[38]

Congress has guaranteed to employees the right to bargain collectively in respect to rates of pay, wages, hours of employment, or other conditions of employment. The deduction of union membership dues from wages is traditionally a subject of collective bargaining, and is a matter appropriately encompassed by NLRA section 9(a). Therefore, an employer may not refuse to negotiate with the representative of his employees concerning a check-off plan. And the bargaining right accordingly granted to employees *may not be abridged by state regulation.*

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35. Amalgamated Ass'n v. Wisconsin Employment Relations Board, 71 Sup. Ct. 359, 363 (1951). The Court here relied on International Union of United Auto Workers v. O'Brien, 339 U.S. 454 (1950), a decision holding unconstitutional a Michigan strike control law. Aside from the observation that the right to engage in concerted activities was safeguarded for employees in the federal Act, it was further noted that Congress imposed, in NLRA section 8(b), certain qualifications on the exercise of that right, thereby pre-empting this area of employee activity. This reasoning points up a specific analogy between the right to engage in concerted activities, and the right to bargain in respect to a dues check-off. For the conditions on which union dues may be deducted from wages were expressly decreed by Congress in Taft-Hartley section 302. See note 3 *supra.* It is a fair conclusion that for this reason check-off is closed to state regulation. In marked contrast is the express grant to the states of authority to prohibit union security agreements, notwithstanding that such agreements are included within the scope of Taft-Hartley section 9(a). See note 37 *infra.*

36. Amalgamated Ass'n v. Wisconsin Employment Relations Board, 71 Sup. Ct. 359, 367 (1951). See *id.* at 363 n.12.

37. Although union security agreements are a subject of mandatory bargaining, see Andrew Jergens Co., 76 N.L.R.B. 363 (1948), they may be prohibited by state regulation under authority granted by Taft-Hartley section 14(b). Professor Cox and Mr. Seidman, commenting on the problem of determining the extent to which a state may regulate the terms of a bargaining agreement, propose this formula: "The test, we suggest, is whether the state law regulates labor relations in order to adjust the conflicts of interest between employers and employees or seeks to protect other interests which the state deems paramount and whose advancement only collaterally affects issues of labor policy." Cox and Seidman, *supra* note 32, at 242.

38. Amalgamated Ass'n v. Wisconsin Employment Relations Board, 71 Sup. Ct. 359, 367-68 (1951).